



Human Trafficking and Juvenile Prostitution

SB 373 & HB 486

October 21, 2014

Overview



- Authorization
- SB 373 and HB 486
- Background
- Difficulties with Human Trafficking Cases
- Summary
- Policy Options

Authorization



- Senate Bill 373 (Senator John Edwards) and House Bill 486 (Delegates Timothy Hugo and Ronald Villanueva) were introduced during the Regular Session of the 2014 General Assembly. Both bills were left in the House Courts of Justice Criminal Law Sub-Committee, and a request was sent to the Crime Commission for review.
- Both bills sought to address human trafficking.

SB 373 and HB 486



- SB 373 would add several new sections to the Va. Code to address human trafficking:
 - Creates new felonies for trafficking in persons for forced labor or sexual servitude;
 - Adds the new felonies as predicate acts to racketeering activities;
 - Adds the new felonies to the multi-jurisdictional grand jury statute; and,
 - Allows forfeitures for convictions of the new felonies.

SB 373 and HB 486



- The new felonies proposed by SB 373 are either already covered by existing crimes in Virginia, have the potential to criminalize legitimate business conduct, or are worded in a circular manner that could make the statutes difficult for prosecutors to use.
- For example, the bill makes it a crime to “use coercion to compel an individual to provide forced labor or services.” Coercion is defined as including “use of force against, abduction of, or physical restraint of, an individual.”
- Anyone who violates this new felony would already be guilty of abduction.
- Another definition of coercion, as provided by the bill, is “the abuse or threatened abuse of law or legal process.”
- Would a contractor threatening to sue a subcontractor if he didn’t start work immediately be a violation of the statute?

SB 373 and HB 486



- There are various policy arguments that can be made both in favor of, and against, enacting this type of Human Trafficking Act.
- Arguments in favor include:
 - Passing an Act helps bring public attention to the very real problems of human trafficking;
 - Currently, it is extremely difficult to obtain accurate figures as to the amount of human trafficking that occurs in Virginia, so having a specific Code section could lead to better tracking of this crime;
 - The more statutes that punish this reprehensible criminal behavior, the better; and,
 - Having a Human Trafficking Act makes it easier for law enforcement to make arrests and bring a specific charge against traffickers, instead of obtaining warrants for a number of different offenses, e.g., abduction and pandering.

SB 373 and HB 486



- Arguments against passing a Human Trafficking Act include:
 - All the crimes that are included in the Act are adequately covered by existing statutes, which are clearly written, have extensive case law, and are very familiar to prosecutors;
 - Whenever a new statute is enacted that is not based on existing Virginia statutory language, there is a risk that it could be struck down, or interpreted in a very narrow manner;
 - Virginia generally has not favored creating duplicative statutory offenses; i.e., if an activity is already a crime, there is no need to criminalize it a second time;
 - If a crime is specifically covered in a Human Trafficking Act, and carries a lower penalty than an existing statute, defense counsel will argue that the lower penalty must be applied; and,
 - Most versions of Human Trafficking Acts employ confusing cross-references, use new terms that have not previously been defined in Title 18.2, and are worded overly broadly.

SB 373 and HB 486



- HB 486 would:
 - Require those individuals who are required to report suspected child abuse or neglect to also report suspected cases of child human trafficking;
 - Designate local departments of Child Protective Services (CPS) to be the public agency responsible for receiving and responding to reports of suspected human trafficking of children;
 - Require CPS to report annually on its activities concerning investigation of reports of suspected human trafficking of children and services provided to children; and,
 - Require making CPS a lead in investigating human trafficking cases.
 - Note that this last requirement could interfere with law enforcement investigations.

SB 373 and HB 486



- The Department of Social Services (DSS) is subject to a new Federal law, the “Preventing Sex Trafficking and Strengthening Families Act,” which includes reporting requirements and the mandate to develop plans with law enforcement and juvenile justice systems for foster children.
 - It is not clear at this time how these new requirements will change or expand the duties of DSS regarding human trafficking, since it was passed on September 29, 2014.

Background



- Human trafficking is often referred to as a form of modern day slavery and has been defined by the U.S. Congress in the “Trafficking Victims Protection Act” of 2000 to embody:
 - Sex trafficking , where commercial sex acts are induced by force, fraud, or coercion, or by minors; or,
 - To place persons by use of force, fraud, or coercion for the purpose of subjection into involuntary servitude, peonage, debt bondage, or slavery.

Background



- On multiple occasions since 2006, the General Assembly and various state agencies have considered the problems of human trafficking, and have taken several steps to address this criminal activity:
 - As a result of the 2006 Crime Commission study, Virginia’s extortion statute, Va. Code § 18.2-59, was modified to include threats to report someone as being illegally present in the United States, or confiscating or withholding passports, immigration documents, or other government identification documents.
 - Punished as a Class 5 felony.

Background



- In 2007, the General Assembly created the *Commission on the Prevention of Human Trafficking*. There were no specific legislative actions passed as a result of this Commission.
- In 2009, Va. Code § 18.2-47 (abduction/ kidnapping) was expanded to include a trafficking subsection, which applies to persons seized, taken, or transported for forced labor or services.
- In 2010, the Crime Commission was mandated to examine human trafficking in the context of prostitution-related offenses and indecent liberties, per HJR 97. No recommendations were made by Crime Commission members as a result of this study.

Background



- In 2011, both the Department of Criminal Justice Services (DCJS) and the Attorney General's Office were required to advise law enforcement on how to identify and prosecute human trafficking cases under the existing common law and criminal statutes of the Commonwealth. (2011 Va. Acts, chapt. 719).
- Also in 2011, DSS was statutorily required to develop a plan which would provide services including identifying victims of human trafficking, providing assistance to obtain existing benefits, and providing medical and mental health services. (2011 Va. Acts, chapt. 258).

Background



- Legislation passed in 2012 required the Department of Education, in collaboration with DSS, to provide awareness and training information for local school division staff concerning human trafficking, to include strategies for the prevention of the trafficking of children. (2012 Va. Acts, chapt. 317, 370).
- In 2012, legislation was passed to require certain business owners to post signs containing information about a human trafficking hotline. (2012 Va. Acts, chapt. 630).
- In 2012, the taking and detaining of persons for purposes of prostitution, and receiving funds for prostitution, were made predicate offenses for purposes of Virginia’s criminal gang statute.

Background



- In 2013, an amendment to Va. Code § 15.2-1724 was passed to allow law enforcement to enforce abduction violations outside of their jurisdictional limits.
- In 2013, Va. Code § 19.2-215.1 was amended to allow multi-jurisdictional grand juries to investigate receiving monies for procuring a person (Va. Code § 18.2-356).
- In 2013, the crime of soliciting prostitution, Va. Code § 18.2-346, was amended to make it a Class 5 felony to solicit a minor, less than 16 years old, and a Class 6 felony to solicit a minor 16 or older.

Background



- In 2013, under the direction of the Secretary of Public Safety, DCJS created a workgroup to review current practices for dealing with human trafficking and to develop new strategies. Recommendations included:
 - Coordinate human trafficking enforcement statewide;
 - Capture or track statistics about human trafficking in Virginia;
 - Ensure access to services for victims; and,
 - Educate professional groups and equip those groups to identify, investigate, and prosecute cases.

Background



- In 2013, the Crime Commission studied forced prostitution, decriminalization of juvenile prostitution and expungement of prostitution convictions and charges. No recommendations were made by Crime Commission members as a result of this study.

Difficulties with Human Trafficking Cases



- In most instances, human trafficking does not involve the literal taking of a person off the streets through an act of violence. Usually the victim is lured into the lifestyle based on promises of money, affection, or a better life.
- In cases of sex trafficking, these victims develop loyalty to their pimps due to fear, dependency, or an emotional attachment.

Difficulties with Human Trafficking Cases



- Because of the intense loyalty the victims display towards their abusers/pimps, either through fear of the pimp or of the legal system, victims do not trust law enforcement or service providers, and if not placed in some form of custody, victims may contact their pimp and resume the prostitution.
- A number of law enforcement officials and service providers have noted it is often better to keep criminal charges “over their head” to keep victims within the judicial system, so that they have access to assessment and treatment options.

Difficulties with Human Trafficking Cases



- Safe harbor provisions, or decriminalizing prostitution for minors, is therefore problematic.
 - Can function as a recruitment tool.
 - May serve as a disincentive to obtain treatment and as an impediment to getting the pimp/abuser off of the street.

Difficulties with Human Trafficking Cases



- Discussions with law enforcement and prosecutors have revealed a number of statutory changes that could be made to help combat human trafficking in Virginia.
- While a heightened penalty was created for soliciting prostitution from a minor, there is no heightened penalty for pandering or procuring minors for purposes of prostitution.
 - Should the existing Class 4 felonies for Va. Code §§ 18.2-356 and 18.2-357 be made Class 3 felonies when a juvenile is involved?

Difficulties with Human Trafficking Cases



- If a pimp is discovered to be recruiting juveniles for prostitution, but is interrupted or arrested before he can successfully recruit anyone, it is very difficult to prosecute him.
 - Should Virginia create a “recruitment for purposes of prostitution” statute, similar to the existing gang recruitment statute? A defendant would be guilty even if his recruitment efforts were not successful.

Difficulties with Human Trafficking Cases



- Current Virginia law allows aliens to obtain drivers' licenses, if they have a pending application for temporary protected status or a similar conditional status.
- However, the relevant Va. Code sections do not list either "T visas," issued for victims of trafficking, or "U visas," issued for victims of a crime such as rape or domestic abuse, as immigration documents that permit the obtaining of a drivers' license.
 - Prosecutors and advocates have noted this creates difficulties for victims who are eligible to work, but are not able to lawfully drive.

Summary



- Both the Crime Commission, the General Assembly, and various state agencies have examined the topic of human trafficking on a regular basis since 2006.
- While no version of a model “Human Trafficking Act” has been enacted by the General Assembly, various statutory changes have been made in instances where deficiencies were identified in Virginia’s statutes.

Summary



- Recent federal legislation, similar in subject matter to HB 486, was enacted this past September.
 - DSS will presumably be evaluating how to implement any new requirements generated by the “Preventing Sex Trafficking and Strengthening Families Act.”
 - Requiring local CPS agencies to conduct investigations of human trafficking and to coordinate with local law enforcement may inadvertently lead to police investigations being hindered.
 - Endorsing legislation on this may be premature.

Summary



- While the penalties for soliciting a minor for purposes of prostitution were increased in 2013, there was no corresponding increase in penalties for those who pander or procure minors for purposes of prostitution.
- Law enforcement has indicated that it can be difficult to prosecute a person who is discovered to be recruiting minors for purposes of prostitution, but is arrested before any other criminal acts take place.
- Some aliens who are victims of human trafficking are not able to receive a drivers' license in Virginia, even though they are lawfully present under either a T visa or a U visa.

Policy Options



1. Should Virginia enact a comprehensive Human Trafficking Act, with newly created felonies, similar to that proposed by SB 373?

Policy Options



2. Should local CPS become involved in investigations where juveniles are believed to be victims of human trafficking?
 - If so, should it be made clear that law enforcement would take the lead on any criminal investigation?

3. Should mandatory reporters become responsible for reporting cases of suspected trafficking of children?

Policy Options



3. Should a heightened penalty for pandering or procuring prostitutes, when minors are involved, be created?
4. Should a new “recruitment for purposes of prostitution” statute, modeled after Virginia’s gang recruitment statute, be created?

Policy Options



5. Should Virginia allow aliens who have a T visa or a U visa the ability to apply for drivers' licenses in Virginia?
 - Legislation may not be needed, as DMV recently changed their internal process to allow additional forms of acceptable documentation so these aliens can obtain a drivers' license.



Discussion
